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**NOTARIAL DEEDS IN
INTERNATIONAL LEGAL
RELATIONS**

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**Significance, aim and structure of the
analysis**

- **Why the topic on the position of notarial deeds in international legal relations is so crucial in the context of the theme of this conference – “Cross -border Civil Proceedings in the EU”?**
- ✓ The significance of this topic derives from *the mission that notary has in the current globalisation phenomenon – to provide for efficient cross-border legal relations and legal certainty in international transactions.*
- **Fundamental premises of the analysis:**
 - ❖ The trend of globalization presupposes revocation or at least minimization of the obstacles that inhibit the international legal relations, including the relations with notarial deeds.
 - ❖ Cross-border relationships are still burdened with different kinds of obstacles that inhibit the free circulation of notarial deeds.

Significance, aim and structure of the analysis

- **How to satisfy the need to recognize universal effects of the notarial deeds in cross-border relationships?**

In answering this question, we analyzed

- ❖ The current mechanisms for providing external efficiency of domestic notarial deeds, and respectively the mechanisms for internal efficiency of foreign notarial deeds.

Which lead us to answer

- ❖ Whether further liberalization of the legal regime of the international relations with notarial deeds is necessary, in order to provide the notarial deed with "*fidem and auctoritatem*" not only within, but also outside the state borders of the country of origin.

The notion and the effects of the notarial deeds

- ✓ The core area of the notarial work is the regulation - certificatory function which comprises the official composition of deeds for legal matters and statements with which certain rights are established.
- **Notarial deeds are:**
 - ❖ deeds for legal matters and statements drawn up by the notary in the form of a **notary act**;
 - ❖ **minutes** for legal matters composed by the notary or which have been composed in his presence,
 - ❖ **certificates** for facts which the notary has confirmed by direct observation or by means of documents.
- ✓ The question on effects of notarial deeds can only be posed and answered from the perspective of a particular legal system.
- ✓ Within different legal systems, usually more legal effects of the notarial deeds can be identified.
- **We narrowed our elaboration on:**
 - ❖ the evidence effect of the notarial deed.
 - ❖ the notarial deed as an enforceable instrument.
 - ❖ composition of notarial deeds in matters with cross - border elements.

Evidence effect of notarial deed

- The public deeds (including the notarial deeds) are one of the most commonly used and particularly secure means of proof in the legal relations, both in judicial and administrative proceedings.
- Different evidentiary rules
 - ❖ In Latin notary countries, the evidentiary rule for veracity of the public (notarial) deeds applies: *notarial deed gives full evidence of the operation that has been notarized by the notary.*
 - ❖ The assumption of veracity of public (notary) deeds does not apply in the countries that are not familiar to the Latin notary.
- The assumption of veracity of public (notarial) deeds arises from the *assumption of authenticity (originality)*.
 - ❖ Domestic public deeds - the authenticity is presupposed, unless the body in an appropriate proceedings where the deed is used, suspects in its authenticity.
 - ❖ Foreign public deeds *should be appropriately verified*, unless otherwise provided in an international agreement.

Evidence effect of notarial deed

- Mechanisms for conducting the authenticity of the document.
 - ❖ Legalization as the most traditional mechanism.
 - ❖ The procedure for legalization itself implies the involvement of multiple bodies (diplomatic body, court, administrative body) with a few chain validations and super-validations, which considerably complicates and delays the proceedings.
 - ❖ The legalization is not carried out when it has been abolished on bilateral, regional or multilateral legislative level.
- ❖ The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents of 1961
 - ❖ issuance of an certificate (l'apostile) by an authorised body of the state from which the deed originates, at the request of the person who has signed the document or any bearer - *sufficient evidence to the originality of the deed.*
- ❖ It is not be required when either the laws, regulations, or practice in force in the state where the document is produced or an agreement between two or more contracting states have abolished or simplified it, or exempt the document itself from legalisation.

Evidence effect of the notarial deed

- Efforts for further simplification of the formalities for ensuring the authenticity of the deed:
 - ❖ The possibilities to place an apostille not only on the original document, but also on its certified copy,
 - ❖ Currently in trial electronic issuance of an apostille of public notarial deeds in some countries.
- Regional level
 - ❖ Brussels Convention abolishing the legalisation of documents in the member states of the European communities of 1987 - completely abolishes the legalisation of the public deeds between the member states.
 - ❖ Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,
 - ❖ Regulation (EC) No.2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility,
 - ❖ Regulation (EC) No.1346/2000 on insolvency proceedings,
 - ❖ Regulation (EC) No.1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).
- ❖ the deeds that are going to be submitted in the exequatur procedure according to these regulations require neither consular certification nor a similar formality.

Evidence effect of notarial deed

- By bilateral agreements (for legal assistance in civil and criminal matters or for mutual legal relations) the need for legalisation of deeds in legal relations between two contracting states is abolished.
- **We can summarize the following:**
 - ❖ Foreign notarial deeds do not have the same evidence effect in all countries, since the different evidentiary rules apply, as well as different mechanisms for providing their authenticity.
 - ❖ If a foreign notarial deed *has a status of a public deed* in the country in which it has been issued, and if in the relations with that country the legalisation has been abolished, or legalisation or apostille are required, and that formality has been complied with, then the foreign notarial deed in terms of its evidentiary force is equalised with the domestic notarial public deed.
 - ❖ If a foreign notarial deed *does not have a status of a public deed* according to the law of the country where it has been issued or in a case when it should be legalised, and it has not been legalised, then in the procedure it shall be considered as a private deed under the principle of free appraisal of evidence.

Notarial deed as an enforceable title in international legal relations

- The notarial deeds do not acquire the effect of *res iudicata*.
- Certain notarial deeds possess the effect of enforceability.
- ❖ In Latin notary countries - enforceable notarial deeds are an efficient alternative to court proceedings, they are excellent instruments for quick and efficient legal enforcement.
- ❖ The Common Law countries have not implemented the progressive institution of the enforceable deed in their legal systems.
- When the notarial deed is an enforceable instrument?
 - ✓ The notarial deed is an enforceable title (instrument)
 - *if a certain obligation for acting on which the parties may agree is determined in the deed, and*
 - *if it contains a statement by the debtor that on the basis of that deed, enforcement for the realisation of the action after the obligation is due can be conducted directly.*

Notarial deed as an enforceable title in international legal relations

- Whether foreign notarial deeds have the effect of enforceable title and are directly enforceable in other countries? or
- Are the legal provisions of the country of origin that confer enforcement effect of a notarial deed significant *per se* for the enforcement organs of the other countries?
- ✓ *The internationalisation of the notarial deeds, in particular their cross-border recognition and enforcement assumes a fundamental trust in the quality of the notarial function in general and in the notarial deeds in particular*
- ✓ Despite all the globalisation and mutual interconnections, even today the legal effects of notarial deed especially its enforcement effect attributed to it in its state of origin does not automatically extend to foreign states, especially not those in which the enforcement should take place.
- Basic principle of the international enforcement of enforceable deed – necessity of the enforcement declaration.
- Steps for providing that execution can be conducted without the prior issuing of a declaration of enforceability.
- ✓ Within EU, according to some regulations (ex. Regulation No. 44/2001, 805/2004), the recognition and enforcement of notarial deeds in all EU member States is only subject to very few formal requirements.

Composing notarial deeds in matters with cross-border element

- The territorial principle.
- The area of notary activities is not limited on account of the international connections of the subject - matter of his notarization.
- The international element can not be a reason for the notary to refuse to prepare a notary act.
- Regardless whether the relationship in question has international element or not, the principle *lex loci actus* applies.
- The autonomous notarial law:
 - ❖ Established the basis for international legal assistance for the notaries of different countries.
 - ❖ Introduced the principle of assignation of the notarial deed - gives the notary right, apart from the domestic law on notary, to respect the substantive and procedural, as well as the collision provisions of the country in which the deed will be used, and provides that the notary deed in formal and substantive sense is composed in accordance to the requirements of the country where it is going to be used.

Concluding remarks

- No doubt, the notarial deeds are the fundamental instruments of international legal relations, which provide for greater legal certainty in international transactions.
- The legal regime of notarial deeds in international legal relations is still burdened by numerous rules (*lex loci actus*, legalisation or its substitutes, reciprocity etc.) which are an expression of the sovereignty of the country where the notary works and which generally weaken the confidence in foreign notarial deeds.
- In order to increase the external efficiency of the notarial deeds, it is necessary:
 - ❖ continuously to work on the abolition of the legal barriers which prevent the free cross-border relations with notarial deeds,
 - ❖ in the practice to decrease the skepticism and to strengthen the principle of faith in foreign notarial deed, to the extent that does not threaten the public order of the country where the foreign notarial deed is going to be used.